IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2007

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THE HONOURABLE MR. JUSTICE S. PALANIVELU

Crl.O.P.Nos.25205,25221 and 25223 of 2007
and
M.P.Nos.1,1 and 1 of 2007

Amirthalingam ... Petitioner in all the petitions

Vs

State by The Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008. ... Respondent in all the petitions

Prayer in all the petitions:
Criminal Original Petitions filed under section 482 of Cr.P.C. to direct the appellate court namely the learned VI Additional Sessions Judge, Chennai to accord permission to compound the offences by the parties concerned by setting aside the order passed in Crl.M.P.No.6539 of 2007 in C.A.No.145 of 2000, Crl.M.P.No.6537 of 2007 in C.A.No.143 of 2000 and Crl.M.P.No.6538 of 2007 in C.A.No.144 of 2000 respectively, on the file of the learned VI Additional Sessions Judge, Chennai.

For Petitioner : Mr.M.Vijayakumar
For Respondent : Mr.A. Saravanan,G.A(Crl.Side)

C O M M O N O R D E R

The petitioner is accused in all the cases. He has been charge sheeted under Sections 467, 471 and 120(b) IPC. After a complete trial, the trial Court convicted him. He has preferred appeals in C.A.Nos.143, 144 and 145 of 2000 before the learned VI Additional Sessions Judge, City Civil Court, Chennai. He has filed miscellaneous petitions in Crl.MP.Nos.6537, 6538 and 6539 of 2007 with a prayer to permit them under Section 320(5) of Cr.P.C to compound the matter between the accused and the complainant. After hearing the above petitions, the learned VI Sessions Judge on 08.08.2007 dismissed the petitions on an observation that since these offences do not come under Section 320(5) Cr.P.C. as compoundable offences, no permission could be granted and all these petitions were dismissed.

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2. Learned counsel for the petitioner would contend that High Court has got every power under Section 482 Cr.Pc to grant permission to the parties to compound the offences. In support of his contention, he relied upon the decisions reported in Krishnan Vs. State (1991 L.W.Crl.590) and S.Haja Mohideen & Others V. State of Tamilnadu etc. (2002-2 L.W.(crl.) 948), wherein this Court has permitted the parties to compound the offence.

3. The learned counsel draws the attention of this Court in the decision rendered in Gurcharan Singh V. The State and another (1998 Cri.L.J.3780), wherein it has been held that during pendency of investigation, if any settlement was arrived at between the parties, the High Court can quash the proceedings under Section Section 482 Cr.P.C. The learned counsel very much stressed on the point as regards the power conferred on the High Court under Section 482 Cr.P.C. placing various decisions of Honourable Supreme Court of India.

4. The learned counsel further relied on Krishnan V.Krishnaveni (1997 Cri.L.J.1519) in which in para No.11 it is held as follows:

> "11. In Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551: AIR 1978 SC 47), a three-Judge Bench was to consider the scope of the power of the High Court under S:482 and S.397(2) of the Code. This Court held that the bar on the power of revision was put in order to facilitate expedient disposal of the cases but in S.482 it is provided that nothing in the Code, which would include S.397 (2) also, shall be deemed to limit or affect the inherent powers of the High Court. On an harmonious construction of said two provisions in this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of he aggrieved party..."

5. The learned counsel also cited another Judgment of Apex Court in M/s. Pepsi Foods Ltd. V. Special Judicial Magistrate (1998 CRI.L.J.1) for the proposition of law as to the power of the High Court under Section 482 to quash the criminal proceedings in various stages.

6. The gist of the contention of the learned counsel for the petitioner is that even though the offences under which the petitioner has been charged do not come under Section 320 Cr.P.C, this Court can very well permit the parties to compound the offences.

7. On the submissions made by the learned counsel for the petitioner, the learned Government Advocate (Criminal Side) would submit that even though the High Court has been empowered to exercise its powers under Section 482 Cr.P.C, as far as granting of permission to compound the non-compoundable offences is concerned, the Honourable Supreme Court has

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held that it is not permissible. To support his contention, he relied on a decision of Honourable Supreme Court reported in Bankat V. State of Maharashtra (2005 SCC (Cri) 316, in which it is held as follows:

> "Sub-Section (9) of Section 320 specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 provided under Section 320 can be compounded and the rest of the offences punishable under IPC cannot be compounded.

8. He also relied upon the Full Bench decision of Supreme Court in Surendra Nath Mohanty and Another Vs. State of Orissa (1999 SCC (Cri) 998) in which Their Lordships have referred catena of decisions of Supreme Court on this subject and held that they are not in accordance with law. Referring the cases in Ram Pujan V. State of U.P (1973 SCC (Cri)870) and Mahesh Chand V.State of Rajasthan (1990 Supp SCC 681), the Supreme Court has held that they are not in accordance with law. After considering the powers of the High Court in granting permission to compound the non-compoundable offence, concerning Section 320(9) of Cr.P.C, Their Lordships have held thus:

> "5. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under the Indian Penal Code could not be compounded."

9. As held by the Supreme Court in Surendra Nath Mohanty and Another Vs. State of Orissa (1999 SCC (Cri) 998), the appellate Court may take into account the fact of compromise at the time of final hearing of appeal.

10. The law of the land as settled by the Honourable Apex Court in the above decisions is that compounding of non-compoundable offence is not permissible since there is a statutory bar in the Crl.P.C. There is no circumstances warranting permission for granting such a relief.

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11. Following the above decisions of Honourable Supreme Court in the cases referred, it is held that no permission could be granted to compound non-compoundable offences and hence the petitions stand dismissed. Consequently, connected miscellaneous petitions are dismissed.

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Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The VI Additional Session Judge, chennai.

2.-do- thro. The Session Judge , Chennai.

3. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008.

4.The Public Prosecutor,
High Court, Madras.

+ 3 ccs to Mr.M.Vijayakumar Advocate SR.NOs.57969,57970,57971

SSV(CO)
RD 29.9.07

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